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HOUSE OF REPRESENTATIVES

REPORT
101-329

COPYRIGHT ROYALTY TRIBUNAL REFORM AND MISCELLANEOUS PAY ACT OF 1989

NOVEMBER 3, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. KASTENMEIER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 3046]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3046) to reduce the number of commissioners on the Copyright Royalty Tribunal, to change the salary classification rates for members of the Copyright Tribunal and the United States Parole Commission and for the Deputy and Assistant Commissioners of Patents and Trademarks, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may cited as the "Copyright Royalty Tribunal Reform and Miscellaneous Pay Act of 1989".

SEC. 2. COPYRIGHT ROYALTY TRIBUNAL AND COPYRIGHT OFFICER.

(a) MEMBERSHIP OF THE COPYRIGHT ROYALTY TRIBUNAL; LAPSED TERMS; PAY.—Section 802(a) of title 17, United States Code, is amended to read as follows:

"(a) The Tribunal shall be composed of three Commissioners appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as a Commissioner shall be seven years, except that a Commissioner may serve after the expiration of his or her term until a successor has taken office. Each Commissioner shall be compensated at the rate of pay in effect for level V of the Executive Schedule under section 5316 of title 5.".

(b) COPYRIGHT OFFICE.—Section 701 of title 17, United States Code, is amended by adding at the end the following new subsection:

"(e) The Register of Copyrights shall be compensated at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5. The Register of

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Copyrights shall be assisted in the performance of his or her duties by three Associate Registers of Copyrights who shall each be compensated at the rate of pay in effect for level V of the Executive Schedule under section 5316 of title 5.".

SEC. 3. PAY RATES FOR PAROLE COMMISSION.

(a) CHAIRMAN.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Chairman, United States Parole Commission.".

(b) OTHER COMMISSIONERS.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

"Commissioners, United States Parole Commission (8).".

SEC. 4. PAY RATES FOR DEPUTY AND ASSISTANT COMMISSIONERS OF PATENTS AND TRADEMARKS.

Section 5316 of title 5, United States Code, is amended by adding at the end the following:

"Deputy Commissioner of Patents and Trademarks.
"Assistant Commissioner for Patents.
"Assistant Commissioner for Trademarks.".

SEC. 5. EFFECTIVE DATE; BUDGET ACT.

(a) EFFECTIVE DATE.—The amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) BUDGET ACT.—Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this Act shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriations Acts.

Amend the title so as to read:

A bill to reduce the number of Commissioners on the Copyright Royalty Tribunal, to change the salary classification rates for members of the Copyright Tribunal and the United States Parole Commission, for the Register and Associate Registers of Copyrights, and for the Deputy and Assistant Commissioners of Patents and Trademarks, and for other purposes.

I. PURPOSE OF THE LEGISLATION

The purpose of the legislation is to reduce the number of Commissioners of the Copyright Royalty Tribinal, and to provide for the lapsed terms of offices for Copyright Tribunal Commissioners. The legislation also changes the salary classification rates for members of the Tribunal, for members of the United States Parole Commission, for the Deputy and Assistant Commissioners of Patents and Trademarks, and for the Register of Copyrights and three associate Registers of Copyrights.

The Copyright Royalty Tribunal is authorized five Commissioners, but has functioned effectively since 1984 with three. This legislation reduces the number of Commissioners authorized from five to three. Unlike most Commissions, the Tribunal's present statute makes no provision for service beyond the expiration of a term until a successor is confirmed and duly qualified. This legislation makes such provision. Currently, Commissioners are compensated at a level equal to Grade 18 of the General Schedule, a level being phased out in the Executive Branch. This legislation would change this general schedule reference to the equal amount reflected in the Executive Schedule, Level V.

The legislation makes a similar change in status (from Grade 18 to Executive Level V) for eight Commissioners of the United States Parole Commission and the Deputy Commissioner of Patents and Trademarks as well as the Assistant Commissioner of Patents. The status of the Chairman of the Parole Commission and the Register

of Copyrights are changed from Grade 18 to Executive Level IV. Finally, the three Associate Registers of Copyright and the Assistant Commissioner of Trademarks are changed from Grade 17 to Executive Level V.

II. Background

A. Copyright Royalty Tribunal

The Copyright Royalty Tribunal (Tribunal) was created in 1976 by the General Revision of the Copyright Law of that year. Its primary function is the distribution of funds collected under compulsory licenses for cable and satellite retransmitted television signals and for jukeboxes and to set rates in these areas as well as in the area of phonorecords and noncommercial educational broadcasters.

The Tribunal carries out these functions by holding hearings and issuing final determinations, unless the parties/claimants are able to settle their differences beforehand. All final determinations are subject to appeal to the U.S. Courts of Appeal.

Number of Commissioners

The Tribunal is statutorily authorized five Commissioners who are appointed for seven-year terms by the President with the advice and consent of the Senate. Since 1984, the Tribunal has been composed of three Commissioners, with two positions vacant. In recent years, the Appropriations Committees have provided funds for only three positions.

The legislative history of the Copyright Act reflects the intention that the Tribunal remain an independent agency in which the Commissioners perform all professional responsibilities themselves. The staff of the Tribunal consists of a personal assistant to each commissioner and a general counsel. The general counsel position, added in 1985, has proven beneficial to the functioning of the Tribunal.

Since 1985, the Tribunal has held three rate adjustment proceedings and currently has several others pending before it. Since that time, the Tribunal has also concluded five jukebox distribution proceedings and five cable distribution proceedings and is presently engaged in a current cable distribution hearing. Seven of these decisions have been appealed to Courts of Appeal and all affirmed.

This record of performance indicates that the Tribunal has functioned effectively with three Commissioners for the past four years.

Lapsed terms

Unlike other entities which have Commissioners appointed for fixed terms, the Tribunal has no provisions for lapsed terms. The authorizing legislation for most Commissions provide that a Commissioner will serve, beyond the expiration of his term, until a new Commissioner is confirmed.

At present, one Tribunal Commissioner's term expired September, 1989; the other two expire September, 1991. It adds to the difficulty of conducting hearings to have only two Commissioners sitting. This difficulty is especially compounded, given the fact there is only a small staff and that much of the work must be carried out personally by the Commissioners. Because it can take 6 months or

more to screen candidates, nominate and complete Senate confirmation, it can be expected that there will be a several month lapse in the Tribunal Commissioner position which expired this year, absent a lapsing provisions.

Salary reclassification

The Commissioners salaries are now authorized at the GS–18 level of the General Schedule. This is equal to the entry level for Presidential appointees in the Executive Branch, Executive Level V. At the time of the Tribunal's authorization, 1976, this was also the highest level for Civil Service employees. Subsequently, Congress, in 1978, revised the "supergrade" system supplementing it with the Senior Executive Service (SES). Since then nearly all career GS–18 positions have been converted to SES.

The GS–18 positions which were once occupied by several thousand employees now number less than 80, mostly non-supervisory personnel, in the Executive Branch. Although the current GS–18 Tribunal Commissioner level still remains equal to Executive Level V, recent recommendations (not implemented) of the President's Quadrennial Pay Commission have revised the Executive Level but not the General Schedule.

The salary reclassification in this legislation would maintain the established parity of Tribunal Commissioners with other entry level Presidential appointees.[1]

B. UNITED STATES PAROLE COMMISSION

The United States Parole Commission is an independent agency created within the U.S. Department of Justice. It curently is comprised of nine members appointed by the President, by and with the advice and consent of the Senate. Among the Commissioners, the President designates one to serve as chairman.

The Commission was abolished by the Comprehensive Crime Control Act of 1984 (Public Law 98–473, title II, section 218(a)(5), Oct. 12, 1984, 98 Stat. 2027). But any of the Commission's powers in effect before November 1, 1987, shall remain in effect until November 1, 1992, as to any individual who committed a Federal criminal offense before November 1, 1987, and as to terms of imprisonment imposed before that time. In other words, the concept of parole was eliminated prospectively from the Federal criminal justice system, as Congress opted for a determinate sentencing system (with guidelines set by the U.S. Sentencing Commission). The theory was that the Parole Commission would remain in effect for the "old law" prisoners.

Although the Parole Commission is slated for disappearance in 1992, the need to transfer the Commissioner positions from GS–18 to Executive Level V, placing these Presidential appointees on a similar footing as their counterparts in government, is still extant.

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[1] For further information about the Copyright Royalty Tribunal and the amendments to its statutory charter, see Hearings on Copyright Office and Copyright Royalty Tribunal Oversight before the Subcommittee on Courts, Intellectual Property, and the Administration of Justice, 101st Cong., 1st Sess. 40 (1989) (statement of Honorable Edward W. Ray).

The Parole Commission is, therefore, treated similarly to the Copyright Royalty Tribunal.[2]

C. U.S. PATENT AND TRADEMARK OFFICE

The Patent and Trademark Office administers laws relating to patents and trademarks to promote the progress of science and technology and to strengthen the national economy. This is accomplished by:

(1) Examining patent and trademark applications, issuing patents and registering trademarks;

(2) Disseminating patent and trademark information to the public; and

(3) Encouraging a domestic and international climate in which intellectual property can flourish.

To carry out this mission, the Assistant Secretary and Commissioner of Patents and Trademarks is assisted by Management officials who administer parts of the Office responsible for these functions. The Deputy Commissioner for Patents and Trademarks is the alter ego of the Assistant Secretary and Commissioner. The Assistant Commissioner for Patents is responsible for the management of the patent examining corps, and the documentation operations and the scientific library. The Assistant Commissioner for Trademarks is responsible for the managment of the trademark registration operations. These officials all have under their supervision managers in the Senior Executive Service who are compensated at higher salary levels than they are. Classification of these positions at Level V of the Executive Schedule will correct this imbalance and provide for their compensation at a level comparable to other senior administrators.[3]

D. U.S. COPYRIGHT OFFICE

The U.S. Copyright Office, located in the Library of Congress, is responsible for administering the copyright law and the semiconductor chip protection law pursuant to title 17 of the United States Code. In carrying out these responsibilities, the Office, under the direction of the Register of Copyrights, performs the following functions:

(1) Maintains the public registry of both claims to copyright and semiconductor chip products, records documents pertaining to a copyright, and administers the five compulsory licenses provided in the Copyright Act;

(2) Provides information and technical assistance to Congress concerning policy and legislative matters relating to copyright;

(3) Plays a leadership role in international copyright matters to develop policies for the improvement of international standards for the protection of intellectual property;

(4) Advises the Executive Branch—the State Department, the Commerce Department, and the Office of the U.S. Trade Represent-

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[2] For further information, see id. at 80 (letter from the Honorable Steny H. Hoyer to the Honorable Robert W. Kasternmeier (dated May 18, 1989, with attachment)).

[3] The provisions of the bill relating to the Patent and Trademark Office were added in the subcommittee as an amendment offered by Mr. Moorhead.

ative—in developing U.S. policies in trade-related intellectual property negotiations both in bilateral and multilateral contexts; and

(5) Assists the public and the Federal judicial branch through administration of the U.S. registration system by examining claims to copyright, clarifying the statement of the claim, and refusing registration of ineligible works, thereby narrowing the issues that must be litigated and facilitating commercial transactions in copyrighted works.[4]

To accomplish these functions, the Register of Copyrights is assisted by several hundred employees. In terms of protocol and responsibility, the Register is considered the equal of the Commissioner of Patents and Trademarks, who currently is classified at Level IV of the Executive Schedule. In order to underline the growing importance of copyright in American society, and its positive impact on trade and domestic productivity, it makes eminent good sense to change the status of the Register from GS–18 of the General Schedule to Level IV of the Executive Schedule.

As stated above, GS–18 positions in government are a disappearing breed, now occupied by a fairly low number of non-supervisory personnel in the Executive Branch. The important post of Register of Copyright should be pegged at the same level as Presidential appointees who supervise governmental entities with mandates similar to the Copyright Office. The proposed legislation accomplishes this goal.

In carrying out the Office's responsibilities, the Register has been assisted by three Associate Registers of Copyright. One of these positions is currently vacant and there is some question whether the Library of Congress has sufficient authorized positions at the appropriate pay grade to fill it. The proposed legislation codifies these positions and raises them from a level of GS–17 to Executive Level V, bringing them into parity with their colleagues at the Patent and Trademark Office. This change would not have any immediate fiscal consequences because all the positions are already at the maximum pay level. Given the fact that the Copyright Office currently is handling 42 percent more claims to copyright than ten years ago as well as increased responsibilities associated with U.S. adherence to the Berne Convention and an increased volume of legislation requiring analysis by the Copyright Office, the three Associate Register positions should be statutorily established and placed in the Executive Schedule at the same level as their counterparts in the executive branch.

In short, the Copyright Office is an important division of the Library of Congress, which is a tremendous resource component of the Legislative Branch. The Committee expects this resource to continue to be available and to accomplish its assigned functions. In exchange, the Congress should provide the Copyright Office and the employees of that Office with requisite support and resources.

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[4] For more information about the Copyright Office, see House Hearings, supra note 1, at 2 (statement of Honorable Ralph Oman).

III. Sectional Analysis

SECTION 1. SHORT TITLE

Section 1 of the bill sets forth the bill's short title: "The Copyright Royalty Tribunal Reform and Miscellaneous Pay Act of 1989".

SECTION 2. COPYRIGHT ROYALTY TRIBUNAL AND THE COPYRIGHT OFFICE

Section 2 amends provisions of the Copyright Act relating to the Copyright Royalty Tribunal and the Copyright Office.

First, subsection 2(a) revises section 802(a) of Title 17 of the United States Code to reduce the number of Copyright Royalty Tribunal Commissioners from five to three, to add the provision that Commissioners may serve beyond the expiration of their terms of office until successors have been qualified and to change the reference of Commissioners' salaries from GS–18 of the General Schedule to Level V of the Executive Schedule. This revision also deletes the obsolete language which pertained to the staggered length of Commissioners terms in the first five years of the Tribunal's existence.

Second, subsection 2(b) provides that the Register of Copyrights shall be compensated at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5. Subsection (b) further specifies that the Register of Copyrights shall be assisted in the performance of his or her duties by three Associate Registers of Copyrights who shall each be compensated at the rate of pay in effect for level V of the Executive schedule under section 5316 of title 5. This latter provision statutorily codifies the post of Associate Register of Copyrights, creating three such positions in the Copyright Office.

SECTION 3. PAY RATES FOR PAROLE COMMISSION

Section 3 changes the status and pay of Commissioners on the United States Parole Commission from GS–18 of the General Schedule to Level V of the Executive Schedule. The Chairman of the Parole Commission shall be compensated at the rate of pay in effect of Level IV of the Executive Schedule.

SECTION 4. PAY RATES FOR DEPUTY AND ASSISTANT COMMISSIONERS OF PATENTS AND TRADEMARKS

Section 4 amends section 5316 of title 5, United States Code, to compensate three Presidential appointees in the United States Patent and Trademark Office at a rate of Level V of the Executive Schedule. These officers are: the Deputy Commissioner of Patents and Trademarks; the Assistant Commissioner for Patents; and the Assistant Commissioner for Trademarks.

SECTION 5. EFFECTIVE DATE; BUDGET ACT

Section 5 provides that this Act shall take effect immediately upon enactment and that any new spending authority be effective only to the extent as provided in appropriation Acts.

IV. Statement of Legislative History

On March 16, 1989, the Subcommittee on Courts, Intellectual Property, and the Administration of Justice held an oversight hearing on the functioning of the Copyright Royalty Tribunal. The Honorable Edward W. Ray, Chairman—accompanied by the Honorable Mario F. Aguero (Commissioner), the Honorable J.C. Argetsinger (Commissioner), and Robert Cassler, Esq., (General Counsel)—provided testimony for the Tribunal. During this testimony, the Tribunal requested introduction of legislation to assist the Tribunal to meet its legislative mandae. In addition. the Register of Copyrights (the Honorable Ralph Oman) testified on behalf of the Copyright Office. Mr. Oman explained the functions and workload of the Officed and requested the introduction of legislation to raise copyright registration fees.[5]

On March 23, 1989, H.R. 1621 was introduced by Subcommittee Chairman Robert W. Kastenmeier and the ranking minority Member of the Subcommittee, Mr. Moorhead.

On July 25, 1989, H.R. 1621 was marked up. An amendment was offered to the bill by Mr. Moorhead to change the salary classification of the Parole Commission and the Deputy and Assistant Commissioners of Patents and Trademarks. The amendment passed unanimously by voice vote.

Finally, a quorum of Members being present, the amended bill was reported favorably by voice vote (no opposition being heard) to the full Committee in the form of a clean bill. On July 28, 1989, H.R. 3046 was introduced with cosponsorship as follows: Mr. Kasenmeier, for himself; Mr. Moorhead; Mr. Crockett; Mr. Berman; Mr. Bryant; Mr. Cardin; Mr. Boucher; Mr. Sangmeister; Mr. Hughes; and Mr. Synar.

On October 3, 1989, H.R. 3046 was considered by the full Committee. After general debate, an amendment was offered by Mr. Moorhead to add the Register of Copyrights and the three Associate Registers of Copyrights to the bill, changing their current salary classifications. The amendment passed by voice vote. Then, H.R. 3046, as amended, was reported favorably to the full House, a quorum of Members being present, by voiced vote with no opposition being heard.

V. Oversight Findings

The Committee has oversight over the four government entities—the Copyright Royalty Tribunal, the Copyright Office, the Parole Commission, and the Patent and Trademark Office—whose statutory charters are amended by the proposed legislation. This report constitutes an integral part of the Committee's continuing effort to oversee these entities and their key leadership positions. As oversight findings, the Committee adopts the analysis and discussion of this report.

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[5] That legislation (H.R. 1622, 101st Cong., 1st Sess. (1989)) has been processed separately. It passed the House by voice vote on October 16, 1989. See 135 Cong. Rec. 7064 (daily ed. Oct. 16, 1989). For further information, see H. Rep. No. 101-279, 101st Cong., 1st Sess. (1989).

VI. Statement of the Committee on Government Operations

In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

VII. New Budget Authority

In regard to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the bill creates no new budget authority or increased tax expenditures for the Federal government.

VIII. Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee feels that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

IX. Cost Estimate

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee agrees with the cost estimate of the Congressional Budget Office.

X. Statement of the Congressional Budget Office

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the following is the cost estimate on H.R. 4262, prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 5, 1989.

Hon. Jack Brooks,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 3046, the Copyright Royalty Tribunal Reform and Miscellaneous Pay Act of 1989, as ordered reported by the House Committee on the Judiciary, October 3, 1989. We expect that enactment of the bill would cost the federal government about $10,000 annually.

H.R. 3046 would change the salary classification rates for members of the Copyright Royalty Tribunal and the United States Parole Commission, for the Deputy and Assistant Commissioners of Patents and Trademarks, and for the Register of Copyrights and the Associate Registers of Copyrights. In addition, the bill would reduce to three the maximum number of commissioners of the tribunal, and would allow tribunal commissioners to continue to serve after their terms expire until a successor has taken office.

Most of the changes in salary classifications would not have a significant impact on the federal budget because most of the positions would continue to be compensated at their current rate. However, the salary of the Register of Copyrights and the Chairman of

the Parole Commission each would be increased by $5,200 annually. Reducing to three the maximum number of commissioners of the tribunal would not result in savings because, since 1984, the tribunal has been composed of only three members. Other provisions of the bill would have no budget impact.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO contact is Douglas Criscitello, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

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CHAPTER 7—COPYRIGHT OFFICE

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§ 701. The Copyright Office: General responsibilities and organization

(a) * * *

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(e) The Register of Copyrights shall be compensated at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5. The Register of Copyrights shall be assisted in the performance of his or her duties by three Associate Registers of Copyrights who shall each be compensated at the rate of pay in effect for level V of the Executive Schedule under section 5316 of title 5.

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CHAPTER 8—COPYRIGHT ROYALTY TRIBUNAL

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§ 802. Membership of the Tribunal

[(a) The Tribunal shall be composed of five commissioners appointed by the President with the advice and consent of the Senate for a term of seven years each; of the first five members appointed, three shall be designated to serve for seven years from the date of the notice specified in section 801(c), and two shall be designated to serve for five years from such date, respectively. Commissioners

shall be compensated at the highest rate now or hereafter prescribe for grade 18 of the General Schedule pay rates (5 U.S.C. 5332).]

(a) The Tribunal shall be composed of three Commissioners appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as a Commissioner shall be seven years, except that a Commissioner may serve after the expiration of his or her term until a successor has taken office. Each Commissioner shall be compensated at the rate of pay in effect for level V of the Executive Schedule under section 5316 of title 5.

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TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart D—Pay and Allowances

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CHAPTER 53—PAY RATES AND SYSTEMS

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Subchapter II—Executive Schedule Pay Rates

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§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

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Chairman, United States Parole Commission.

§ 5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Administrator, Agricultural Marketing Service, Department of Agriculture.

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Commissioners, United States Parole Commission (8).

Deputy Commissioner of Patents and Trademarks.
Assistant Commissioner for Patents.
Assistant Commissioner for Trademarks.

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